EXHIBIT A

VOL. II

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs- 10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,
Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on February 28, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PAIGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.
(716)332-3560

I N D E X

this point, show Mr. Carlacci Government Exhibit 131 for identification purposes.

And absent an objection, admit this into evidence.

THE COURT: 131?

MR. MANGO: Yes, your Honor. This is a multiple-page document.

THE COURT: I'm sorry. Bear with me.

MR. MANGO: Yes, sir.

THE COURT: I can't locate it on here.

(Discussion held off the record.)

THE COURT: Okay. What do have on the screen now, before it's published? It doesn't look like 131.

MR. MANGO: We zoomed in, your Honor. It is. It's just a little -- not too sharp.

MR. LINSIN: Okay. I'm satisfied, your Honor.

THE COURT: All right. Well, then we're all happy then.

MR. MANGO: Subject to an objection, I would move this document into evidence, your Honor.

THE COURT: How could there possibly be an objection now, Mr. Mango? There's no objection, right?

MR. LINSIN: No, your Honor.

THE COURT: All right. Mr. Personius?

MR. PERSONIUS: I want to clarify: It's not just the letter, Judge, there's more to it?

MR. MANGO: Yes.

MR. PERSONIUS: Does this have the emission study with it? Is that what this is?

MR. MANGO: Your Honor, I expect the evidence will show if we move through this, this is an inventory of hazardous air pollutants that are included with this. It's a two-page cover letter followed by a hazardous air pollutant emission inventory prepared for Tonawanda Coke Corporation.

MR. PERSONIUS: Yes, Judge, understanding that, no objection.

THE COURT: Okay. And that's the way it's described on the exhibit list as well. So, okay. So we got actually two parts, okay, the letter and the addendum, so to speak.

Okay. 131 received, no objection.

(Government's Exhibit 131 was received into evidence.)

BY MR. MANGO:

Q. Okay. If we can move on, let's just focus on this. And why don't you tell the jury, please,

Mr. Carlacci, what -- what they are looking at.
A. This letter is focusing on a new NESHAP that regulates quench towers pushing and heat waste stacks. It's applicable if the facility emits, as a major source of hazardous air pollutants, over ten tons of an individual HAP or 25 tons total HAPs. And this document documents the emissions from the facility as a whole showing that it's below those thresholds and this NESHAP does not apply.
Q. Okay. So this is a letter from Tonawanda Coke to the DEC. And if you can, just read this last sentence here.
A. "The proposed rule only -- a proposed rule is applicable only to major sources" --
Q. I think -- I'm sorry. You're reading this where the green dot is on the screen. "That document --"
A. "That document demonstrates that TCC's Tonawanda New York facility is not a major source of HAPs."
Q. All right. And this letter is signed by who? Let's go to the second page, please.
A. Mark Kamholz with Tonawanda Coke.
Q. If we go to the third page, this begins the

hazardous air pollutant emission inventory, is that correct?

A. Correct.

MR. MANGO: Your Honor, if I could have just one moment, please.

THE COURT: Certainly.

BY MR. MANGO:

Q. I'd like to direct your attention to page 18 of this document. And there's a discussion about quenching in here, is that correct?

A. Correct.

Q. Ask you to read starting at "particulate emissions."

A. "Particulate emissions from quenching are typically large carbon particulate created by the break up of hot coke upon contact with water. PM emissions are a function of quench tower controls; i.e., use of baffles, and the quench water total dissolved solids level. The Tonawanda Coke quench tower has baffles for control of PM emissions."

Q. Okay. So the Tonawanda Coke Corporation is sending this document to DEC saying we have baffles?

A. Correct.

THE COURT: Okay. Enlarge the entire page

for me, please, Ms. DiFillipo. The full page, please. Okay. Just checking a number for a second. You referenced page 18. And where does that come in? Because this is 2-10. I don't see 18 anywhere on there.

MR. MANGO: Yes, your Honor. This copy was not Bates marked. It is -- it's page 18 in the document. So that was more of a code to get us on the right page.

MR. PERSONIUS: For the record --

MR. MANGO: I'll refer to page 2-10 at the bottom.

THE COURT: Please.

BY MR. MANGO:

Q. Okay. If we could then go to 4-1, which would be page 23. 4-1, if we can go there. So now there's a section dealing with emissions from by-product plant equipment components, is that right?

A. Correct.

Q. And if we can go to the next page, 4-2, this has a table with a summary of the different types of -- let's focus on that section, please -- of the different components at the Tonawanda Coke Corporation, is that right?

A. Correct.
Q. Okay. And you do see listed here -- let's -- I want to direct your attention directly to this pressure release valve, number of components, it says one. What are the emissions that relate to that pressure release valve?
A. This is identifying one pressure relief valve in the coke oven system using -- using a published emission factor with a reference of total organic compound emissions in tons per year of .003.
Q. Can you tell the jury -- give the jury an example? How much are we talking about would be .0030 in terms of emissions? Is that a lot? A little?
A. It's a little, very little.
Q. Okay. So if -- I want to get back to what we've been talking about. Under 201-3, trivial and exempt activities, been talking about a trivial activity known as an emergency pressure release valve, right?
A. Correct.
Q. Okay. If an emergency pressure release valve is being used and emits .003 tons per year of emissions, would that be used as a trivial activity?

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs- 10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,
Defendants.

Excerpt of proceedings held before the Honorable William M. Skretny, U.S. Courthouse, 2 Niagara Circle, Buffalo, New York on March 5, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PAIGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
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Official Reporter,
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(716)332-3560

I N D E X

A. Okay.
Q. Did the inspection happen?
A. Yes, it did.
Q. Okay. Did there come a time during the course of the inspection that you had a conversation with Defendant Kamholz about the bleeder valve in the presence of the inspectors?
A. Yes, we did.
Q. Okay. Can you tell the jury where -- where were you at the time of this conversation?
A. Again, we were over by that green shack, that green building. And I don't know how it happened, but something came out of the stack. And one of the inspectors seen it and said to Mark, "What was that?" Mark said, "Steam." They said "Steam? What else is it?" And he said, "Pressure relief valve." "Well, how long has that pressure relief valve been in service?" Mark said, "I don't know. Pat, how long has that pressure relief valve been in service?" I told him, "I don't know. As long as I've been in the by-products." That's it.
Q. Let's talk about that for a minute.
A. Sure.
Q. So you mentioned that you were in the vicinity of Defendant Kamholz and the inspectors when

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs- 10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,
Defendants.

Excerpt of proceedings held before the Honorable William M. Skretny, U.S. Courthouse, 2 Niagara Circle, Buffalo, New York on March 6, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PAIGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
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I N D E X

Mr. Kamholz, right?

A. Yeah.

Q. You've told us about how you would go in in the morning and you'd raise the pressure up for the pressure relief valve, right?

A. Yeah.

Q. And you'd go back at night and you -- you'd drop it back down, right?

A. Yes.

Q. And we can agree, can we not, that Mr. Kamholz never told you to do that, did he?

A. No, he didn't.

Q. And did Mr. Kamholz -- to your knowledge, did Mr. Kamholz know that you did that? Let me put that a different way.

MR. MANGO: Whoa, whoa, whoa. Your Honor, I object. Let him answer the question.

THE COURT: He can -- well, you want to withdraw the question.

MR. MANGO: He was working on an answer, your Honor.

THE COURT: Do you remember the question?

THE WITNESS: No, I don't.

MR. PERSONIUS: Let me just ask it again, Judge.

THE COURT: All right. Let's take our time here. Okay. Ask the question.

BY MR. PERSONIUS:

Q. Did you ever tell Mark Kamholz, either before or during or after, that you were going to raise the pressure up in the morning and drop it down at night?

A. No.

Q. You never told him, did you?

A. No.

Q. And do you otherwise know if Mr. Kamholz knew what you were doing?

A. No.

Q. All right. Now, you spent some time this morning with Mr. Mango talking about the -- the by-products log?

A. Yes.

Q. He selected one page from the log and said -- back in March of '09, and said, Do you see there's a mention here of changing the pressure on the valve.

A. Yes.

Q. And then he walked you through all the days of the inspection in April of '09 and said, Do you see any changes here regarding the pressure, and you

Q. All right. Now, the fact that you didn't put entries in the by-products log book for this week or so of the inspections that you testified about, Mr. Kamholz didn't tell you to not make those entries, did he?

A. No, sir.

Q. And did you ever tell Mr. Kamholz that you had made those entries in the by-products log book?

A. No, sir.

Q. And as far as you know, Mr. Kamholz had no idea that you had done that, correct? Is that fair?

A. Yes, sir.

THE COURT: What was your question, that he had or had not made entrees in the products [sic] log book?

MR. PERSONIUS: I should have said had not. Did I mix it up?

THE COURT: I think you did.

MR. PERSONIUS: I'll ask it again, and thank you for correcting me.

BY MR. PERSONIUS:

Q. Mr. Kamholz, to your knowledge, would not have known that you failed to make entries for that week of the inspection in April of '09 in this log book, true?

A. Yes, please.

Q. Okay. Understandable. And I'll try to make this quick. But let me ask it this way.

Between the time of the -- what you say was the Friday conversation with Mr. Kamholz, and the start of the inspection, Mr. Kamholz didn't come to you to make sure you had done something about the pressure relief valve, true?

A. True.

Q. And during the entire period of the inspection, Mr. Kamholz never came to you to say now you've taken care of this, Pat, right?

A. True.

Q. And you told us that during the inspection that the PRV actually went off, right?

A. Yes, it did.

Q. And after that happened, you agree, Mr. Kamholz never came to you and said, Pat, what did you do, is that true?

A. Yes.

Q. And after that, up to the present, Mr. Kamholz has never discussed with you anything further about that pressure relief valve, true?

A. True.

Q. I now want to talk about what happened in the

right?

A. Yes.

Q. And those drip legs should be closed, right?

A. Yes.

Q. That's the correct thing to do with them, right?

A. Yes.

Q. Okay. Now, as far as the conversation, the way you've recounted it to us is the way you recounted it in your grand jury testimony. And I want to go through that with you, if I can, step by step.

The pressure valve -- pressure relief valve releases, and Mr. Kamholz made a remark that was only steam, is that right?

A. Yes.

Q. Okay. And someone, one of the inspectors, said well, what is it, right?

A. Yes.

Q. And you don't remember which inspector said that, but Mr. Kamholz's response was that's the pressure relief valve, right?

A. Yes, it was. Yes.

Q. Which was accurate, right?

A. Yes.

Q. That's what it was?

A. Yes.
Q. So is it still your recollection that part of your anger had to do with the fact that you thought Mr. Kamholz should have known that was coke oven gas?
A. Yes.
Q. You testified in the grand jury that you couldn't tell whether it was coke oven gas or steam, right?
A. Right.
Q. Okay. And just in fairness to you, you felt put upon because of what you felt Mr. Kamholz was doing to you, that he was putting you on the spot, right?
A. Yes, sir.
Q. And can we agree that, in terms of your recollection of these events, that how you interpreted what Mr. Kamholz was doing to you has affected your recollection?
MR. MANGO: Objection, your Honor.
THE COURT: Grounds?
MR. MANGO: There's no basis or foundation for this question, your Honor.
THE COURT: Let's -- do you remember the question?

MR. PERSONIUS: All right.

THE COURT: Because, remember, ladies and gentlemen, it's the witness's answer that's the evidence, not anything having to do with what the attorney believes or not.

BY MR. PERSONIUS:

Q. Now, the other point that you raised yesterday in your testimony was that the source of your anger is that you felt that Mr. Kamholz should have known how long that pressure relief valve had been there, right?

A. Yes.

Q. And you're not open to the fact that Mr. Kamholz may not have known how long it had been there?

MR. MANGO: Objection, your Honor.

THE COURT: Sustained.

BY MR. PERSONIUS:

Q. Do you know when the pressure relief valve was installed?

A. No, sir.

Q. Okay. And when Mr. Kamholz said I don't know, he simply said, Pat, how long has that been there right?

A. Yes, he did.

MR. PERSONIUS: I'll try to.

THE COURT: Yeah, I mean, it's a little bit lengthy. So --

MR. PERSONIUS: Sure it is.

THE COURT: Reput the question.

MR. PERSONIUS: I'm trying to do it a right way, but you're right, it is.

BY MR. PERSONIUS:

Q. You were the head of by-products, right?

A. Yes.

Q. PRV is within by-products?

A. Yes.

Q. Something you knew as much about as anybody in the plant, right?

A. Yes.

Q. And, therefore, to ask you to explain it to these inspectors, you have an objection to that?

A. No.

Q. Okay. And the information that you gave to the inspectors, was it accurate? Did you answer all their questions?

A. Yes.

Q. And did you answer them accurately?

A. To my knowledge, yes.

Q. Okay. And how you answered those questions was

entirely left up to you, right?

A. Yes.

Q. Mr. Kamholz had not told you ahead of time what to tell these inspectors, right?

A. No.

Q. And as you're talking to the inspectors, he's not giving you signals about what you should say?

A. No.

Q. Everything you told the inspectors was left totally up to you?

A. Yes.

Q. Okay. Now, Mr. Mango asked you if at some time later that day you talked to two other employees, Mr. Brossack, who's testified here, and a gentleman name Mr. Priamo, about this series of events.

Do you remember that?

A. Yes.

Q. You told him that you did, right?

A. Yes.

Q. How much later in the day was that conversation?

A. I want to say 3:30, 4:00 o'clock. Late evening.

Q. Okay. How many hours passed from this discussion you had with the inspectors until you

EXHIBIT D

United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Criminal Enforcement, Forensics and Training

ENFORCEMENT CONFIDENTIAL

CLEAN AIR ACT COMPLIANCE INVESTIGATION

NEICVP0842E02

TONAWANDA COKE CORPORATION
Tonawanda, New York
NEIC Project No.: VP0842

October 2009

Project Manager:

Martha Hamre

Other Contributors:

Ken Garing
Robert Bohn, PAC

Prepared for:

U.S. EPA Region 2
290 Broadway
New York, New York 10007-1866

Authorized for Release by:

Craig Kubik, Field Branch Chief

NATIONAL ENFORCEMENT INVESTIGATIONS CENTER
P.O. Box 25227
Building 25, Denver Federal Center
Denver, Colorado 80225-5227

NEIC

CONTENTS

TABLE

APPENDICES

The Contents page shows all sections contained in this report and provides a clear indication of the end of this report.

INTRODUCTION

The U.S. Environmental Protection Agency's (EPA) National Enforcement Investigations Center (NEIC) was requested by EPA's Region 2 to conduct a Clean Air Act (CAA) investigation focusing on 40 Code of Federal Regulations (CFR) part 61, subpart L, National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants; 40 CFR part 61, subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources); 40 CFR part 61, subpart FF, National Emission Standard for Benzene Waste Operations; and Title V permit compliance at the Tonawanda Coke Corporation (TCC) facility located in Tonawanda, New York. TCC is located approximately 10 miles north of Buffalo, New York, at 3875 River Road. EPA databases specify a longitude of 42.983639 and latitude of -78.927278.

TCC is a merchant by-product coke facility whose products include metallurgical foundry and furnace coke and whose by-products include coal tar and light oil. TCC purchased the facility from the Semet-Solvay Company in January 1978. TCC operates under standard industrial classification (SIC) code 3312, "Steel Works, Blast Furnaces (including coke ovens), and Rolling Mills," and under the North American Industry Classification System (NAICS) as 324199, "All Other Petroleum and Coal Products Manufacturing."

Pollution control and waste generation and management operations for the facility are regulated by environmental permits and regulations administered by EPA and the New York State Department of Environmental Conservation (NYSDEC).

BACKGROUND

Coke is produced through a destructive distillation process in which coal is heated in ovens in an oxygen-deficient atmosphere. The volatile materials in the heated coal are removed from the ovens as coke oven gas (COG). COG is processed to remove desired by-products (e.g., coal tar and light oil), and then the gas is combusted in boilers to produce steam for the facility and in the coke ovens to heat the coal. In addition to coke, Tonawanda Coke also produces and sells coke making by-products, including coal tar and light oil.

TCC operates a single Wilputte by-product coke battery consisting of 60, 4-meter ovens. The battery began operations in early 1962, and all 60 ovens are operational today. From approximately 1972 through the present, the coke battery has been operated as a merchant foundry coke producer rather than the more common integrated furnace coke producer. Merchant coke plants slow production when the merchant coke market slows. According to Tonawanda Coke, producing foundry coke rather than furnace coke results in about one-half fewer pushes, charges, and consistently lower operating temperatures. In general, coke

production at a foundry coke plant is significantly less than that of a furnace coke plant due to longer coking cycles. There are approximately 120 employees at TCC. There are three shifts with operations 24 hours per day, seven days per week.

TCC was issued its current CAA Title V operating permit, permit number 9-1464-00113/00031, by NYSDEC on April 30, 2002. The Title V permit expired on May 1, 2007; however, the permit has been administratively extended until a new Title V permit is issued by NYSDEC because TCC submitted a timely Title V air permit renewal application.

Emission units listed in the TCC Title V permit include: three boilers (U-00001), a steam stripper for ammonia removal from ammonia liquor (U-ACBLD), coke oven gas by-product recovery unit (U-BPROD), coal handling equipment (U-COALM), equipment used for the operation of the coke oven battery (U-COKEB), coke handling equipment (U-COKES), a light oil storage tank (U-LOSTG), a weak ammonia liquor surge tank (U-SURGT), three weak ammonia liquor storage tanks (U-WLSTG), and a virgin wash oil storage tank (U-WOSTG).

Through discussions with EPA Region 2 personnel, the principal investigation objectives were defined as follows:

- Evaluate compliance with 40 CFR part 61, subpart L, National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
- Evaluate compliance with 40 CFR part 61, subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
- Evaluate compliance with 40 CFR part 61, subpart FF, National Emission Standard for Benzene Waste Operations

ONSITE INSPECTION SUMMARY

The CAA inspection was conducted from April 14 through 21, 2009. During the opening conference, credentials were presented to Mark Kamholz, TCC manager of environmental control. Throughout the inspection, TCC representatives presented process information on raw materials, products, by-products, and wastes for the coke by-product recovery plant. The coke by-product recovery plant process description is located in **Appendix A**. NEIC inspectors also reviewed CAA-related records/documents, conducted a visual inspection of the facility, performed toxic vapor analyzer (TVA) field measurements of coke by-product recovery equipment components, collected wastewater and air canister samples, and interviewed plant personnel. EPA Region 2 and NYSDEC personnel also participated in the investigation. At the conclusion of the onsite inspection, an exit meeting was held to discuss preliminary findings. NEIC personnel stressed that final determinations would be made in conjunction with regional

and state personnel. Photographs taken by NEIC during the onsite inspection are located in **Appendix B**.

Table 1 summarizes the findings and observations of the investigation.

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
	AREAS OF NONCOMPLIANCE		
	Subpart L – National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants		
1.	**40 CFR § 61.132(a)(1)** – *Each owner or operator of a furnace or a foundry coke byproduct recovery plant shall enclose and seal all openings on each process vessel, tar storage tank, and tar-intercepting sump.* **40 CFR § 61.131** – ***Tar-intercepting sump*** *means any tank, pit, or enclosure that serves to receive or separate tars and aqueous condensate discharged from the primary cooler.*	TCC has not enclosed and sealed all openings on its tar-intercepting sumps. TCC has three uncontrolled sumps: tar precipitator sumps (2), downcomer sump (1). These three sumps are tar-intercepting sumps because they separate tar and aqueous condensate and are located downstream of the primary cooler. These three sumps are required to be controlled.	**Appendix B**, Photographs 18, 20, 51, 53
2.	**40 CFR § 61.132(d)** – *Each owner or operator of a furnace coke by-product recovery plant also shall comply with the requirements of (a)-(c) of the section for each benzene storage tank, BTX storage tank, light-oil storage tank, and excess ammonia-liquor storage tank.* **40 CFR § 61.131** – ***Excess ammonia-liquor storage tank*** *means any tank, reservoir, or container used to collect or store a flushing liquor solution prior to ammonia or phenol recovery.*	TCC has not complied with all the requirements for their excess ammonia-liquor storage tanks and light-oil storage tank. TCC has operated as a furnace coke by-product recovery plant since 2007 (assuming 6 percent breeze). Production records show TCC produced greater than 25% furnace coke (less than 75% foundry coke) in 2007 and 2008. TCC is required to enclose and seal all openings on its light-oil storage tank and excess ammonia-liquor storage tanks. At the time of the onsite inspection, TCC was using five uncontrolled/vented excess ammonia-liquor storage tanks. ▪ Excess ammonia liquor storage tanks (2) ▪ Additional excess ammonia liquor storage tank ▪ Surge tank ▪ Ammonia removal system sump	**Appendix C**, 2004 through 2008 TCC annual coke production records **Appendix D**, NEIC Excel spreadsheet – Furnace and Foundry Coke Split **Appendix A**, NEIC Coke By-Product Recovery Plant Process Description, Process Flow Diagram, page 3 **Appendix E**, TCC Process Flow Diagram **Appendix B**, Photograph 61 - Light oil tank

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
		TCC was using two uncontrolled excess ammonia-liquor storage tanks (weak liquor storage tanks) and was beginning to use one additional uncontrolled storage tank due to ammonia stripper repair. TCC also has a vented surge tank and uncontrolled ammonia removal system sump that meets the definition of excess ammonia-liquor storage tanks. The light oil storage tank at TCC was not enclosed and sealed for the time period (since at least 2007) TCC has been operating as a furnace coke by-product recovery plant. TCC installed controls on the light oil storage tank and truck filling line in late 2008/early 2009. A suction line has been connected to the light oil storage tank and truck filling line, and the exhauster on the COG header is used to supply the vacuum. The light oil system was taken out of service on November 20, 2008, and has not been put back into service since.	Photographs 03, 04, 55, and 56 - Excess ammonia liquor storage tanks (weak liquor storage tanks) Photograph 8 - Surge tank Photographs 28 and 48 - Ammonia removal system sump
3.	**40 CFR § 61.135(a)** – *Each owner or operator of equipment in benzene service shall comply with the requirements of 40 CFR part 61, subpart V...* **40 CFR § 61.245(b)(3)** – *The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21.* **40 CFR § 61.245(b)(4)** – *Calibration gases shall be: (i) Zero air...; and (ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.*	**Calibration** TCC does not use the required calibration gases. TCC uses a Foxboro Century OVA-128GC gas chromatograph for equipment leak monitoring. TCC uses a mixture of methane in air calibration gas at a concentration of 497.8 parts per million (ppm) methane. TCC does not use a zero air calibration gas. TCC also does not use a mixture of methane in air calibration gas at a concentration of approximately 10,000 ppm methane or *n*-hexane. The 497.8 ppm methane in air calibration gas used by TCC did not have a specified shelf life. Per 40 CFR part 60, Appendix A, Method 21, Section 7.2, cylinder gases "must be analyzed and certified by the manufacturer to be within 2 percent accuracy, and a shelf life must be specified." TCC uses a dilution probe when monitoring components with a 10,000 ppm leak definition (i.e., exhausters). TCC does not calibrate the OVA-128GC with the diluter probe in place. When TCC used the 10,000 ppm methane in air calibration	**Appendix F**, LDAR calibration gas Certificate of Analysis

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
		gas provided by NEIC, the reading on the OVA-128GC instrument using the dilution probe was approximately 1,500 ppm, which is not within the required 10 percent calibration precision required for the gas value.	
4.	**40 CFR § 61.246(b)(1)** – *When each leak is detected... the following requirements apply: (1) A weatherproof and readily visible identification, marked with the identification number, shall be attached to the leaking equipment.*	Leaking equipment identification was not attached to the leaking equipment found on 04/17/09 (four pieces of equipment).	
5.	**40 CFR § 61.135(a)** – *Each owner or operator of equipment in benzene service shall comply with the requirements of 40 CFR part 61, subpart V...* **40 CFR § 61.242-2(a)(1)** – *Each pump shall be monitored monthly to detect leaks...* **40 CFR § 61.242-7(a)** – *Each valve shall be monitored monthly to detect leaks...*	TCC missed five required monthly monitorings for pumps and valves in benzene service. Monthly monitoring was not conducted in the following months: September 2006, January 2007, May 2007, July 2007, and April 2008. On the basis of the TCC document "Hazardous Air Pollutant Emission Inventory," this monitoring would include 36 valves and 2 pumps in the light oil system.	**Appendix G,** TCC HAP Emission Inventory (Page 4-2)
6.	**40 CFR § 61.135(c)** – *Each piece of equipment in benzene service to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment in benzene service.*	TCC has not marked equipment in benzene service. TCC could not provide NEIC a listing of unique identification markings for each piece of equipment in benzene service. Based on the TCC document "Hazardous Air Pollutant Emission Inventory", TCC has 36 valves, 37 flanges, and 2 pumps in the light oil system. TCC also has 35 valves, 1 pressure relief valve, and 2 exhausters in the coke oven gas system. There is potential that the coke oven gas system components, other than the exhausters which are required to be included (1% benzene), may not contain the 10% benzene to be considered in benzene service.	**Appendix G,** TCC HAP Emission Inventory (Page 4-2)
7.	**40 CFR § 61.138(a)** – *The following information pertaining to the design of control*	TCC could not provide detailed schematics, design specifications, and piping and instrumentation diagrams for control equipment installed to comply with 40 CFR	

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
	equipment installed to comply with §§61.132 through 61.134 shall be recorded and kept in a readily accessible location: (1) Detailed schematics, design specifications, and piping and instrumentation diagrams. (2) The dates and descriptions of any changes in the design specifications.	§ 61.132.	
8.	**40 CFR § 61.138(e)(1)** – *An owner or operator of any source to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of this subpart and 40 CFR 61, subpart V, have been implemented.* **40 CFR § 61.138(e)(4)** – *The statement is to contain the following information for each source: (i) Type of source.... (ii) For equipment in benzene service, equipment identification number and process unit identification: percent by weight benzene in the fluid at the equipment; and process fluid state in the equipment (gas/vapor or liquid). (iii) Method of compliance with the standard.... This includes whether the plant plans to be a furnace or foundry coke by-product recovery plant for the purposes of §61.132(d).*	A statement notifying the Administrator that the requirements of 40 CFR part 61, subpart L and 40 CFR part 61, subpart V had been implemented was not submitted within 90 days of the effective date, September 14, 1989. TCC requested a compliance waiver on December 1, 1989. The proposed timeline extension was to September 15, 1991. TCC submitted a letter to EPA Region 2 addressing 40 CFR § 61.138(e) on January 9, 1992. However, the letter does not meet the requirements of 40 CFR § 61.138(e)(4) for each source. The letter does not include the following: all sources, type of all sources, equipment in benzene service (including equipment identification number and process unit identification: percent by weight benzene in the fluid at the equipment and process fluid state in the equipment (gas/vapor or liquid)), and method of compliance with the standard for all sources.	**Appendix H,** 40 CFR Part 61 Subpart L Request for Waiver and Compliance Update Letter **Appendix I,** January 1992 40 CFR Part 61 Subpart L Notification Letter **Appendix J,** May 1992 TCC Response to Compliance Order **Appendix K,** July 1992 Response to 114 Request **Appendix L,** September 1992 40 CFR Part 61 Subpart L Semiannual Report
9.	**40 CFR § 61.138(f)** – *A report shall be submitted to the Administrator semiannually..., which includes the following information:*	The semiannual reports submitted from September 13, 2005 through March 12, 2009 (seven semiannual reporting periods) do not indicate whether there are any visible defects in the source or ductwork and do not provide a brief description of	**Appendix M,** 40 CFR Part 61 Subpart L Semiannual Reports for 09/13/05 through 03/12/09

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
	(1) For sources subject to §61.132... *(i) A brief description of any visible defect in the source or ductwork,* *(ii) The number of leaks detected and repaired, and* *(iii) A brief description of any system abnormalities found during each annual maintenance inspection that occurred in the reporting period and the repairs made.* *(2) For equipment in benzene service subject to §61.135(a), information required by §61.247(b).* *(3) For each exhauster subject to §61.135 for each quarter during the semiannual reporting period,* *(i) The number of exhausters for which leaks were detected as described in §61.135(d) and (e)(5),* *(ii) The number of exhausters for which leaks were repaired as required in §61.135(d) and (e)(6),* *(iii) The results of performance tests to determine compliance with §61.135(g) conducted within the semiannual reporting period.* *(4) A statement signed by the owner or operator stating whether all provisions of 40 CFR part 61, subpart L, have been fulfilled during the semiannual reporting period.* *(5) For foundry coke by-product recovery*	any system abnormalities found during the annual maintenance inspection, if one occurred during the reporting period. No information is provided regarding equipment in benzene service as required by 40 CFR §61.247(b). There is no discussion about the number of exhausters found leaking, if the leaks were repaired, or the results of any performance tests conducted to determine compliance with 40 CFR §61.135(g) (exhausters designated as no detectable emission sources). There is no statement by the owner or operator stating "whether all provisions of 40 CFR part 61, subpart L, have been fulfilled during the semiannual reporting period." The statement is signed by the TCC environmental control manager instead of the owner, and the statement only discusses TCC "compliance with emission control." Because TCC claims to be a foundry coke by-product recovery plant, the annual coke production for both furnace and foundry coke are required to be included. The 2005 and 2006 annual coke production was not included in the semiannual reports. TCC did begin reporting the annual coke production with the 2008 coke production, after NYSDEC pointed out to TCC that this information was missing. No revisions to the original January 9, 1992, submittal have been reported in the semiannual reports reviewed by NEIC, although changes have occurred (e.g., TCC originally had three exhausters and removed one exhauster, and now only two are onsite).	

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
	plants, the annual coke production of both furnace and foundry coke, if determined during the reporting period. *(6) Revisions to items reported according to paragraph (e) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.*		
10.	**40 CFR § 61.138(g)** – *In the first report submitted as required in §61.138(e), the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous semiannual report.*	In its first report submitted on January 9, 1992, TCC did not include a reporting schedule stating the months that semiannual reports shall be submitted.	**Appendix I**, January 1992 40 CFR Part 61 Subpart L Notification Letter
	Subpart FF – National Emission Standard for Benzene Waste Operations		
11.	**40 CFR § 61.355(a)** – *An owner or operator shall determine the total annual benzene quantity from facility waste by the following procedure: (1) For each waste stream subject to this subpart... (i) Determine the annual waste quantity for each waste stream using the procedures specified...*	TCC did not include all waste streams on its original total annual benzene quantity (TAB) submittal. TCC's original TAB submittal, initially in 1990 with a follow-up letter March 18, 1993, indicates the only subpart FF applicable waste stream at TCC is the weak liquor stream. NEIC identified a number of additional streams that are required to be included. ▪ Coke oven gas drip leg condensate – approximately 10 drip leg locations ▪ Downcomer sump (secondary cooler sump) ▪ Tar precipitator sumps (2) ▪ Ammonia removal system sump NEIC collected benzene waste samples from numerous locations. These samples	**Appendix N**, 40 CFR Part 61 Subpart FF Notifications and Correspondence **Appendix O**, NEIC Laboratory Report **Appendix P**, NEIC Benzene FF Calculations **Appendix A**, NEIC Coke By-Product Recovery Plant Process Description, Process Flow Diagram

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
		were intended for use in calculating the benzene contribution from both individual and group sources. However, in order to calculate benzene quantities, it is necessary to have both an annual average benzene concentration and an annual waste quantity or flow rate. For most of the individual waste streams, TCC could not document or provide reliable waste quantities. Portions of the facility were not operating under normal conditions, and, therefore, the benzene concentration measured in the collected samples may not be representative. Because of these factors, an accurate estimate of the facility's annual TAB quantity cannot be calculated. However, an estimate of the benzene quantity associated with the sampled waste streams is provided in Appendix P.	
12.	**40 CFR § 61.355(a)(4)** – *If the total annual benzene quantity from facility waste is less than 10 Mg/yr but is equal to or greater than 1 Mg/yr, then the owner shall: (i) Comply with the recordkeeping requirements of §61.356 and reporting requirements of §61.357 of this subpart; and (ii) Repeat the determination of total annual benzene quantity from facility waste at least once per year...*	TCC has failed to report an annual TAB quantity for at least the last five years (2004 through 2008), when information submitted by TCC shows greater than 1 megagram (Mg) of benzene in the wastewater sent to the ammonia stripper. TCC reported a TAB quantity of 0.456 Mg/yr in 1990 and submitted a letter in 1993 that confirmed the previous submittal. On the basis of NYSDEC, Division of Air Resources, 2004 to 2008 annual emission statements, TCC generates greater than 1 Mg of benzene in wastewater, resulting in a TAB quantity of greater than 1 Mg. The benzene quantity stripped in the ammonia stripper is: ▪ 2008 3,692 pounds benzene ▪ 2007 2,657 pounds benzene ▪ 2006 2,806 pounds benzene ▪ 2005 2,403 pounds benzene ▪ 2004 2,426 pounds benzene	**Appendix Q,** 2004 through 2008 Annual Emission Statements **Appendix G,** TCC HAP Emission Inventory
	AREAS OF CONCERN	**Areas of concern are inspection observations of potential problems that could result in environmental harm, noncompliance with permit or regulatory requirements, or are associated with pollution prevention issues.**	
A.	**Area of Concern** **[40 CFR § 61.355(c)(3) and (c)(3)(ii)(F)]**	Samples collected for the original TAB determination were not cooled, according to Mark Kamholz, TCC manager of environmental control.	

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
B.	**Area of Concern** **[40 CFR § 61.132(a)(2)]**	TCC has installed piping to duct gases from the tar decanter, BH liquor collection tank, and two tar storage tanks to the coke oven gas collection line, which is operated under negative pressure. The pressure gauge located on the tar decanter was reading positive 0.5 to 1.5 pounds per square inch gauge (psig), and the pressure gauge on the tar storage tanks was reading negative 9.5 psig. TCC was unable to provide an explanation for these contradictory pressure readings.	**Appendix B**, Photographs 98, 102
C.	**Area of Concern** **[40 CFR part 60, Appendix A, Method 21]**	When TCC personnel calibrate the Foxboro Century OVA-128GC, a glass flask and cotton cloth are used to hold the calibration gas mixture and the instrument probe is placed inside the glass flask instead of using tubing with a gas regulator, which would allow the instrument to pull the gas directly into the instrument. A cigarette lighter is used to ignite the instrument because the auto igniter no longer operable. TCC has had the OVA-128GC instrument since the early 1990s and has never sent the instrument off-site to the manufacturer or authorized repair location for maintenance.	
D.	**Area of Concern** **[40 CFR § 61.135(d)]**	On Friday, 04/17/09, NEIC found the following equipment leaking: ▪ Exhauster bearing/seal on exhauster #2 – approx. 60,000 ppm ▪ Flange leak on discharge side of exhauster #2 – >10,000 ppm ▪ Light oil storage tank pump conservation vent (discharge side) – 22,000 ppm ▪ Light oil storage tank open farrell fitting on pump – flame out ▪ Light oil storage tank leaks later found to be not leaking (when in shadow of building) According to TCC, the light oil system has been out of service since November 20, 2008; however, components were found to be leaking. TCC has not reported/documented any equipment leaks in the last three years. TCC had not made a first repair attempt as of 04/20/09 on the exhauster #2 bearing but had five days, until 04/22/09, to make a first repair attempt.	**Appendix R**, 40 CFR Part 61 Subpart L Benzene NESHAPs Monitoring Files and Calibration Records **Appendix B**, Photographs 57,58, 86 – Exhauster #2 Photograph 61 – Light oil storage tank

Table 1. SUMMARY OF FINDINGS AND OBSERVATIONS
Tonawanda Coke Corporation (TCC)
Tonawanda, New York

	Citation	Observation/Finding	Supporting Information
E.	**Area of Concern**	TCC has curbing around a general area that encompasses the tar decanter, surge tank, BH collection tank, tar storage tanks, and decommissioned process vessels no longer in service. TCC refers to this area as "the moat." Historically, the area had four or five sump pumps designed to keep the area dry. However, during the onsite inspection, only one pump was operational and liquid was present in the curbed area. The area had liquid in it the entire time NEIC was conducting the onsite inspection. The liquid includes, but is not limited to: some COG drip leg condensate, pumphouse sump liquids that are routed outdoors to the moat, storm water, and liquids dripping from leaking pipes and connectors in the moat area, including pipes off the primary cooler. The liquid has oil and tar on the water surface and is brownish in color. NEIC collected three samples from the moat area. Also, when NEIC investigators walked around the perimeter of the moat with TVA instruments, the volatile organic compound (VOC) readings were elevated from 2-3 ppm background levels up to 5–15 ppm. The benzene concentration in the wastewater samples collected was approximately 0.5 ppm, even though the liquid surface had been exposed to the atmosphere. The moat area is a square or rectangular area at least 100 feet wide by 100 feet long.	**Appendix B**, Photographs 12, 13, 16, 17, 38, 39, 60, 81
F.	**Area of Concern**	TCC has a pressure relief valve (PRV) on the COG line returning to the coke ovens. The COG pressure is measured in the line coming off the exhausters. The COG pressure is typically between 100 and 150 centimeters (cm) oil. The PRV was set to release at 120 to 130 cm oil, which meant the PRV was releasing COG to the atmosphere as frequently as every half hour on 04/21/09, as NEIC observed on the circular chart on which data was being. The circular chart provided by TCC for 04/20/09 also shows pressures exceeding 130 cm oil. The COG releases typically do not last for more than 15 seconds; however, a large quantity of air toxics could be emitted as a result of this practice. TCC could not explain why the PRV is set at a pressure within normal operations. TCC was checking into setting the PRV release pressure at the high end of normal operating pressures.	**Appendix B**, Photographs 97, 103

EXHIBIT E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs- 10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,
Defendants.

Excerpt of proceedings held before the Honorable William M. Skretny, U.S. Courthouse, 2 Niagara Circle, Buffalo, New York on March 20, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PIAGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.
(716)332-3560

I N D E X

Q. All right. There is a -- would you highlight that sentence please, Lauren?

Would you read that sentence please, Mr. Foersch?

A. "The firm historically has been in compliance with our regulations with only an occasional upset or malfunction causing any problem."

Q. Those were your words?

A. Yes.

Q. And at the time you wrote those on October 18 of 1994, to your knowledge was that accurate?

A. Yes.

Q. Can we go please, Lauren, to Government Exhibit 19.11.1 in evidence?

Do you recognize this exhibit, Mr. Foersch?

A. Yes.

Q. Okay. This letter was addressed to you --

A. Yes.

Q. -- from Mr. Kamholz?

A. Yes.

Q. Okay. We're going to make it a little bigger so it's easier to read. I think that's good enough, thank you.

All right. Now, the "regarding" on this is number 2 quench tower?

A. Yes.
Q. That was the tower to the east?
A. Yes, it was.
Q. And do you remember receiving this letter?
A. Yes.
Q. And do you have a recollection of what Mr. Kamholz was asking for in the letter?
A. Yes.
Q. And what was that?
A. Basically the tower at that time was quite tall, looks like about 70 feet, and he was asking if he could lower the height of the -- basically remove the upper portion of the tower and leave just the remaining lower portion in place.
Q. All right. I'm not -- I'd like to make that paragraph bigger, please, Lauren. It's the third paragraph.

I'm not going to ask you to read this out loud, Mr. Foersch, but you've read this -- this paragraph before, right?
A. Yes.
Q. Okay. You're familiar with the argument that's being set forth in this paragraph?
A. Yes.
Q. Would you explain what your understanding is of

that argument to the jury please?
A. It's basically a repeat of the argument that was made for quench tower number 1, as far as being low to the ground and wide that there would be less entrainment and carry-out of any particulate into the air.
Q. When you say "low to the ground", what is your reference point? What being low to the ground?
A. Well, I'm -- it says it would only be 40 feet high as opposed to it started at 70.
Q. Almost cutting it in half?
A. Yes.
Q. All right. And after you received this letter, what did you do with it?
A. I would have discussed it with my supervisors.
Q. At the time who was that please? This is 1996 if that helps.
A. Probably Henry Sandonato -- Stanley Gubner or Henry Sandonato, one or the other.
Q. All right. Do you see -- put the whole letter up again, please. And then, Lauren, make that part there bigger, please. It's the handwritten part of the letter.
There's handwriting there, do you see it?
A. Yes.

Q. And whose handwriting is that?
A. That would be mine.
Q. All right. And it refers to "discussed with HS 1/6/97", is that what it says?
A. That appears what I read too, yes.
Q. And HS would have been whom, please?
A. Henry Sandonato.
Q. And do you remember the substance of your conversation about this letter with Mr. Sandonato?
A. Not the specifics, no. But it would have been in regards to the arguments that Tonawanda Coke had made relative to the environmental impact of, you know, lowering the stack and stuff.
Q. Okay. All right. This -- this concept of a lowered stack and less of the particulates coming out because you've got less velocity in the steam, am I describing it correctly, is that the point?
MR. PIAGGIONE: Again, it's leading, your Honor. Objection.
THE COURT: All right. It's out there. Why don't you ask him a question again, please.
BY MR. PERSONIUS:
Q. Okay. I'm trying to simplify the point. Is the point that if the tower is shorter, you're going to have less steam velocity, and therefore

it's going to pull fewer of the particulates into the atmosphere?

A. Yes.

Q. That's the argument?

A. Yes, that would be part of it.

Q. And did you discuss that argument with Mr. Sandonato?

A. Yes.

Q. All right. And did he indicate to you whether he agreed or disagreed with that argument?

A. I believe he agreed.

Q. Okay. And did you have a point of view on that argument as to whether or not it had validity?

A. Yes.

Q. What was your viewpoint?

MR. PIAGGIONE: Objection, your Honor. I believe that's irrelevant at this point.

THE COURT: I'm sorry, say that again.

MR. PIAGGIONE: It's irrelevant. He's already indicated that they had agreed in this letter that they were going to permit this.

MR. PERSONIUS: This is about the -- not whether they agreed to the reduction, your Honor. It's the argument that was being made about velocity and pulling out the particulates.

MR. PIAGGIONE: Again, it's irrelevant, your Honor.

THE COURT: What's the relevancy?

MR. PERSONIUS: I'll ask it a different way.

BY MR. PERSONIUS:

Q. Did you discuss your reaction to this argument with Mr. Kamholz?

A. Repeat that.

Q. Were there times when you talked to Mr. Kamholz about this argument that he made regarding the height of the towers and the velocity of the steam?

A. Yes, there were.

Q. And did you share with him what your view was regarding this argument?

A. Yes, I did.

Q. Okay. And what was the view you shared with Mr. Kamholz?

A. I basically agreed in principle with his arguments.

Q. Okay. Did you communicate that to Mr. Kamholz that you agreed?

A. Yes, I did.

Q. Okay. On one occasion or more than one occasion?

A. I believe this discussion came up more than once. So I would say on more than one occasion.

Q. All right. Do you remember what period of time?

A. Probably throughout the time that I did inspections there.

Q. Okay. At Tonawanda Coke?

A. Yes.

Q. Okay.

A. I mean, it was probably brought up a few different times.

Q. All right. And did you discuss the argument with Mr. Sandonato on just this one occasion or other occasions also?

A. Probably just the once.

Q. All right. Did you communicate to Mr. Kamholz what Mr. Sandonato's perspective was on this -- this argument?

A. No.

Q. Okay. Now, could we go please, Lauren, to Government Exhibit in evidence 19.12?

Do you recognize this exhibit, Mr. Foersch?

A. Yes.

Q. Okay. And this is your letter response to Mr. Kamholz?

A. Yes.

Q. All right. Please make that part bigger, Lauren.

That's the body of the letter, Mr. Foersch, correct?

A. Yes.

Q. And you indicate you're answering Mr. Kamholz's letter, right? In the first paragraph?

A. Yes.

Q. And this concerns the reduction in the height of tower number 2?

A. Yes.

Q. Okay. And do you indicate in the letter that the reduction in the height is being approved?

A. Yes.

Q. Okay. Then there's a paragraph that I put a red bracket around. Would you read that to the jury, please?

A. It should also be noted that Part 214.5(a) requires that all wet quench towers be equipped with a baffle system.

Q. Now, was there a reason that you put that paragraph in this letter?

A. Yes.

Q. All right. And tell the jury, please, if you

would, what that reason was.
A. I seem to recall it being twofold, just, again, to notify him or make him aware obviously that the baffles were required. And at the time I wrote this letter to Mark, I wasn't sure if the baffles were located in the top part of the quench tower or if they were located in the bottom part. So I was afraid he might say, oh, you said I could take the top of the tower off, that's where the baffles are, they're not there anymore. And I wanted to make it clear that the department still expected to see baffles in place.
Q. Now, after you sent this lower to Mr. Kamholz, did you have one or more later conversations with him about your letter? And specifically about this paragraph?
A. Probably.
Q. All right. That's not a very confident answer. Is the probably more than a guess?
A. Yes.
Q. All right. Do you have a recollection of whether this paragraph was discussed with Mr. Kamholz once or more than once?
A. I know the argument had been made on a couple of occasions anyways relative to the inefficiencies

of baffles, and that it wasn't maybe cost effective or something to that effect.

Q. All right. And when Mr. Kamholz made those -- those points in his discussions with you, did you respond?

A. Yes.

Q. Okay. Do you remember what your response was?

A. As I said earlier, I typically agreed with him relative to, you know, the baffle -- you know, the efficiencies of the baffle.

Q. Now, after this letter was sent -- it's government -- I keep saying this letter. It's Government Exhibit 19.12, which was sent on January 6th of 1997 -- did you specifically talk about, with Mr. Kamholz at any time, about this sentence or paragraph you had put in this letter?

A. No, I don't.

Q. You don't recall a specific reference to this letter?

A. Talking about, no.

Q. All right. But these discussions about the relative merits of baffles continued?

MR. PIAGGIONE: Objection, your Honor, this has already been asked and answered.

THE COURT: We're working through this

though, so overruled.

You may answer that question and then move on, Mr. Personius.

MR. PERSONIUS: I will, Judge.

BY MR. PERSONIUS:

Q. Did the discussions about the relative merits of baffles with Mr. Kamholz continue after this letter --

A. Yes.

Q. -- was sent. In this letter in January of 1997 did you -- you continued to do inspections at Tonawanda Coke?

A. Yes, I did.

Q. And they continued to be on an annual basis?

A. Yes.

Q. Okay. After this letter of January of 1997, as part of your inspections at Tonawanda Coke, do you have a recollection if you ever checked inside of quench tower number 2?

A. Could you restate that?

Q. Yes. I'm sorry. This letter that we've been referring to from January of 1997, after that letter had been sent to Mr. Kamholz, start it this way, you continued to do your annual inspections, correct?